

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 12, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

and

STATE OF OREGON,

Plaintiff-Intervenor,

v.

RICK PERRY, Secretary of the
United States Department of Energy,
and the UNITED STATES
DEPARTMENT OF ENERGY,

Defendants.

NO: 2:08-CV-5085-RMP

ORDER GRANTING JOINT
MOTION TO AMEND CONSENT
DECREE AND ENTERING THIRD
AMENDED CONSENT DECREE
BETWEEN DEPARTMENT OF
ENERGY AND STATE OF
WASHINGTON

BEFORE THE COURT is a Joint Motion to Amend Consent Decree, ECF
No. 241, by Plaintiff the State of Washington, Department of Ecology, and
Defendants Rick Perry,¹ Secretary of the United States Department of Energy, and

¹ Secretary Perry is substituted as a named Defendant in the caption for former
Secretary Ernest J. Moniz. Fed. R. Civ. P. 25(d).

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1 the United States Department of Energy (collectively, “the Parties”). The Parties
2 stipulate to amendment of the Consent Decree, ECF No. 59, and the Amended
3 Consent Decree, ECF No. 222, with respect to three milestones for the retrieval of
4 waste from certain single-shell tanks.

5 Accordingly, **IT IS HEREBY ORDERED** that the Parties’ Joint Motion to
6 Amend Consent Decree, **ECF No. 241**, is **GRANTED**. The Consent Decree, ECF
7 No. 59, as modified by the Amended Consent Decree, ECF No. 222, and the
8 Second Amended Consent Decree, 232, is further amended, by stipulation of the
9 Parties, as follows:

10 WHEREAS, on October 25, 2010, the Court entered a Consent Decree
11 between the United States Department of Energy (“DOE”) and the State of
12 Washington, ECF No. 59;

13 WHEREAS, after contested proceedings regarding modification of certain
14 aspects of the Consent Decree, the Court on March 11, 2016, issued an Amended
15 Consent Decree, ECF No. 222, including amendments to the Decree’s milestones
16 for tank waste retrievals;

17 WHEREAS, on July 11, 2016, the Hanford Atomic Metal Trades Council
18 (“HAMTC”) issued an order to its members to “stop work” at the tank farms until
19 certain demands were met, including the mandatory use of supplied air for all work
20 within tank farm fencelines;

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1 WHEREAS, on August 31, 2016, HAMTC and WRPS entered into a
2 memorandum of agreement (“MOA”) to resolve the “stop work” order, under
3 which HAMTC agreed to lift the “stop work” order in consideration of WRPS’s
4 agreements, which included commitments related to use of supplied air and
5 cartridge testing;

6 WHEREAS, on December 6, 2016, pursuant to Section IV.C.3.a of the
7 Amended Consent Decree, DOE notified the States of Washington and Oregon that
8 in light of the July 2016 “stop work” and MOA and the associated mandatory use
9 of supplied air, “a serious risk had arisen that DOE may be unable to meet” the B-2
10 and B-3 milestones for tank waste retrievals;

11 WHEREAS, on March 16, 2017, representatives for DOE and the States of
12 Washington and Oregon met in Richland, Washington, consistent with Section
13 IV.C.3.b of the Amended Consent Decree, regarding DOE’s December 2016
14 notice of “serious risk”;

15 WHEREAS, DOE and the State of Washington have recently entered into a
16 settlement agreement in *Hanford Challenge, et al. v. U.S. Department of Energy,*
17 *et al.*, 4:15-cv-5087-TOR, -5086-TOR (E.D. Wash.) (consolidated), one aspect of
18 which is a commitment by WRPS that it will continue cartridge testing and the use
19 of interim mandatory respiratory protections, while exploring and implementing
20 other approaches;

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1 WHEREAS, the above-described use of supplied air for most work
2 throughout the tank farms has reduced efficiencies and delayed tank retrieval
3 operations, and will continue to have such effects in light of the August 2016 MOA
4 and *Hanford Challenge* settlement agreement, as accounted for in the proposed
5 amendment; and

6 WHEREAS, DOE asserts, and the State of Washington does not contest, that
7 the proposed amendment as set forth below is “timely” and that “good cause”
8 exists under Section VII-D of the Consent Decree to extend the current B-2 and B-
9 3 tank retrieval milestones;

10 **THEREFORE, IT IS HEREBY STIPULATED AND ORDERED** that:

11 The Consent Decree between the U.S. Department of Energy and the State
12 of Washington, as amended, is modified as follows:

13 **I. Section IV-B-2**

14 Section IV.B.2 of the Amended Consent Decree, ECF No. 222 at 4, is
15 hereby **AMENDED** to read as follows:

16 In accordance with Appendix B, no later than September 30, 2026, DOE
17 shall complete retrieval of tank waste from nine (9) additional SSTs selected by
18 DOE.

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II. Section IV-B-4

The first sentence of Section IV-B-4 of the Amended Consent Decree, ECF No. 222 at 4, is hereby **AMENDED** to read as follows, with the remainder of the paragraph to remain unchanged:

In accordance with Appendix B, no later than June 30, 2021, DOE shall complete retrieval of five (5) SSTs selected by DOE from the remaining C, A, and AX-Farm SSTs.

III. Appendix B


Appendix B of the Amended Consent Decree, ECF No. 222 at 20–23, is hereby **AMENDED** to read as follows:

1. Tank Waste Retrievals

Project	Description	Date
B-1	Complete retrieval of tank wastes from the following remaining SSTs in WMA-C: C-102, C-105, and C-111.	3/31/2024
B-2	Complete retrieval of tank wastes from the following SSTs in Tank Farms A and AX: A-101, A-102, A-104, A-105, A-106, AX-101, AX-102, AX-103, and AX-104. Subject to the requirements of Section IV-B-3, DOE may substitute any of the identified 9 SSTs and advise Ecology accordingly.	9/30/2026
B-3	Of the 12 SSTs referred to in B-1 and B-2, complete retrieval of tank wastes in at least 5.	6/30/2021

IT IS SO ORDERED. The District Court Clerk is directed to enter this Order, provide copies to counsel, and **reclose the case.**

DATED October 12, 2018.


 ROSANNA MALOUF PETERSON
 United States District Judge

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